

1-1 By: Price (Senate Sponsor - Nelson) H.B. No. 2673
 1-2 (In the Senate - Received from the House April 29, 2013;
 1-3 April 30, 2013, read first time and referred to Committee on Health
 1-4 and Human Services; May 13, 2013, reported favorably by the
 1-5 following vote: Yeas 8, Nays 0; May 13, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Nelson	X			
1-8 Deuell	X			
1-9 Huffman	X			
1-10 Nichols	X			
1-11 Schwertner	X			
1-12 Taylor			X	
1-13 Uresti	X			
1-14 West	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the protection and care of individuals with
 1-20 intellectual and developmental disabilities.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. The heading to Section 411.1144, Government
 1-23 Code, is amended to read as follows:

1-24 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
 1-25 INFORMATION: AGENCIES WITH EMPLOYEES, CONTRACTORS, OR VOLUNTEERS
 1-26 AT STATE SUPPORTED LIVING CENTERS.

1-27 SECTION 2. Sections 411.1144(a) and (d), Government Code,
 1-28 are amended to read as follows:

1-29 (a) The Department of State Health Services, ~~and~~ the
 1-30 Department of Aging and Disability Services, and the Health and
 1-31 Human Services Commission are entitled to obtain from the
 1-32 department criminal history record information maintained by the
 1-33 department that relates to a person:

- 1-34 (1) who is:
 1-35 (A) an applicant for employment with the agency;
 1-36 (B) an employee of the agency;
 1-37 (C) a volunteer with the agency; ~~or~~
 1-38 (D) an applicant for a volunteer position with
 1-39 the agency;
 1-40 (E) an applicant for a contract with the agency;

1-41 or
 1-42 (F) a contractor of the agency; and

1-43 (2) who would be placed in direct contact with a
 1-44 resident or client, as defined by Section 555.001, Health and
 1-45 Safety Code [of a state supported living center or the ICF-MR
 1-46 component of the Rio Grande State Center].

1-47 (d) Subject to Section 411.087, the Department of State
 1-48 Health Services, ~~and~~ the Department of Aging and Disability
 1-49 Services, and the Health and Human Services Commission are entitled
 1-50 to:

1-51 (1) obtain through the Federal Bureau of Investigation
 1-52 criminal history record information maintained or indexed by that
 1-53 bureau that pertains to a person described by Subsection (a); and

1-54 (2) obtain from any other criminal justice agency in
 1-55 this state criminal history record information maintained by that
 1-56 criminal justice agency that relates to a person described by
 1-57 Subsection (a).

1-58 SECTION 3. The heading to Subchapter U, Chapter 531,
 1-59 Government Code, is amended to read as follows:

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SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

SECTION 4. Subchapter U, Chapter 531, Government Code, is amended by adding Section 531.8501 to read as follows:

Sec. 531.8501. DEFINITION. In this subchapter, "contracted organization" means an entity that contracts with the Health and Human Services Commission for the provision of services as described by Section 531.851(c).

SECTION 5. Sections 531.851(a), (c), (d), and (e), Government Code, are amended to read as follows:

(a) The executive commissioner shall establish an independent mortality review system to review the death of a person with an intellectual or [a] developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death:

(1) resided in or received services from:

(A) an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) [~~mental retardation (ICF-MR)~~] operated or licensed by the Department of Aging and Disability Services or a community center; or

(B) the ICF/IID [~~ICF-MR~~] component of the Rio Grande State Center; or

(2) received services [~~residential assistance~~] through a Section 1915(c) waiver program for [serving] individuals who are eligible for ICF/IID [~~ICF-MR~~] services [~~in a residence in which residential assistance is provided to three or more persons and in which the waiver program provider has a property interest~~].

(c) The executive commissioner shall contract with an institution of higher education or a health care organization or association with experience in conducting research-based mortality studies [~~a patient safety organization certified in accordance with 42 C.F.R. Part 3, as effective on January 19, 2009,~~] to conduct independent mortality reviews of persons with an intellectual or developmental disability [~~required by this subchapter~~]. The contract must require the contracted [~~patient safety~~] organization to form a [~~conduct an independent mortality~~] review [~~using a~~] team consisting of:

(1) a physician with expertise regarding the medical treatment of individuals with intellectual or developmental disabilities [~~mental retardation~~];

(2) a registered nurse with expertise regarding the medical treatment of individuals with intellectual or developmental disabilities [~~mental retardation~~];

(3) a clinician or other professional with expertise in the delivery of services and supports for individuals with intellectual or developmental disabilities [~~mental retardation~~]; and

(4) any other appropriate person as provided by the executive commissioner.

(d) The executive commissioner shall adopt rules regarding the manner in which the death of a person described by Subsection (a) must be reported to the contracted [~~patient safety~~] organization by a facility or waiver program provider described by that subsection.

(e) To ensure consistency across mortality review systems, a review under this section must collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with intellectual or developmental disabilities [~~mental retardation~~].

SECTION 6. Section 531.852, Government Code, is amended to read as follows:

Sec. 531.852. ACCESS TO INFORMATION. (a) A contracted [~~patient safety~~] organization may request information and records regarding a deceased person as necessary to carry out the contracted [~~patient safety~~] organization's duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

3-1 (2) information and records maintained by any state or
 3-2 local government agency, including:
 3-3 (A) a birth certificate;
 3-4 (B) law enforcement investigative data;
 3-5 (C) medical examiner investigative data;
 3-6 (D) juvenile court records;
 3-7 (E) parole and probation information and
 3-8 records; and
 3-9 (F) adult or child protective services
 3-10 information and records.

3-11 (b) On request of the contracted [~~patient safety~~]
 3-12 organization, the custodian of the relevant information and records
 3-13 relating to a deceased person shall provide those records to the
 3-14 contracted [~~patient safety~~] organization at no charge.

3-15 SECTION 7. Section 531.853, Government Code, is amended to
 3-16 read as follows:

3-17 Sec. 531.853. MORTALITY REVIEW REPORT. Subject to Section
 3-18 531.854, a contracted [~~The patient safety~~] organization shall [~~, to~~
 3-19 ~~the extent allowed by federal law,~~] submit:

3-20 (1) to the Department of Aging and Disability
 3-21 Services, the Department of Family and Protective Services, the
 3-22 office of independent ombudsman for state supported living centers,
 3-23 and the commission's office of inspector general a report of the
 3-24 findings of the mortality review; and

3-25 (2) semiannually to the governor, the lieutenant
 3-26 governor, the speaker of the house of representatives, and the
 3-27 standing committees of the senate and house of representatives with
 3-28 primary jurisdiction over the Department of Aging and Disability
 3-29 Services, the Department of Family and Protective Services, the
 3-30 office of independent ombudsman for state supported living centers,
 3-31 and the commission's office of inspector general a report that
 3-32 contains:

3-33 (A) aggregate information regarding the deaths
 3-34 for which the contracted [~~patient safety~~] organization performed an
 3-35 independent mortality review;

3-36 (B) trends in the causes of death identified by
 3-37 the contracted [~~patient safety~~] organization; and

3-38 (C) any suggestions for system-wide improvements
 3-39 to address conditions that contributed to deaths reviewed by the
 3-40 contracted [~~patient safety~~] organization.

3-41 SECTION 8. Section 531.854, Government Code, is amended by
 3-42 amending Subsections (a), (b), and (e) and adding Subsections (f)
 3-43 and (g) to read as follows:

3-44 (a) The commission may use or publish information under this
 3-45 subchapter only to advance statewide practices regarding the
 3-46 treatment and care of individuals with intellectual and
 3-47 developmental disabilities. A summary of the data in the
 3-48 contracted [~~patient safety~~] organization's reports or a
 3-49 statistical compilation of data reports may be released by the
 3-50 commission for general publication if the summary or statistical
 3-51 compilation does not contain any information that would permit the
 3-52 identification of an individual or that is confidential or
 3-53 privileged under this subchapter or other state or federal law
 3-54 [~~patient safety work product~~].

3-55 (b) Information and records acquired by the contracted
 3-56 [~~patient safety~~] organization in the exercise of its duties under
 3-57 this subchapter are confidential and exempt from disclosure under
 3-58 the open records law, Chapter 552, and may be disclosed only as
 3-59 necessary to carry out the contracted [~~patient safety~~]
 3-60 organization's duties.

3-61 (e) Reports, information, statements, memoranda, and other
 3-62 information furnished under this subchapter to the contracted
 3-63 organization and any findings or conclusions resulting from a
 3-64 review by the contracted [~~patient safety~~] organization are
 3-65 privileged.

3-66 (f) A contracted organization's report of the findings of
 3-67 the independent mortality review conducted under this subchapter
 3-68 and any records developed by the contracted organization relating
 3-69 to the review:

- 4-1 (1) are confidential and privileged;
- 4-2 (2) are not subject to discovery or subpoena; and
- 4-3 (3) may not be introduced into evidence in any civil,
- 4-4 criminal, or administrative proceeding.

4-5 (g) A member of the contracted organization's review team
 4-6 may not testify or be required to testify in a civil, criminal, or
 4-7 administrative proceeding as to observations, factual findings, or
 4-8 conclusions that were made in conducting a review under this
 4-9 subchapter.

4-10 SECTION 9. Section 531.855, Government Code, is amended to
 4-11 read as follows:

4-12 Sec. 531.855. LIMITATION ON LIABILITY. A health care
 4-13 provider or other person is not civilly or criminally liable for
 4-14 furnishing information to the contracted [~~patient safety~~]
 4-15 organization or to the commission for use by the contracted
 4-16 [~~patient safety~~] organization in accordance with this subchapter
 4-17 unless the person acted in bad faith or knowingly provided false
 4-18 information to the contracted [~~patient safety~~] organization or the
 4-19 commission.

4-20 SECTION 10. Section 555.021, Health and Safety Code, is
 4-21 amended to read as follows:

4-22 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
 4-23 EMPLOYEES, CONTRACTORS, AND VOLUNTEERS [~~OF CENTERS~~]. (a) The
 4-24 department, [~~and~~] the Department of State Health Services, and the
 4-25 Health and Human Services Commission shall perform a state and
 4-26 federal criminal history background check on a person:

- 4-27 (1) who is:
 - 4-28 (A) an applicant for employment with the agency;
 - 4-29 (B) an employee of the agency;
 - 4-30 (C) a volunteer with the agency; [~~or~~]
 - 4-31 (D) an applicant for a volunteer position with
 - 4-32 the agency;
 - 4-33 (E) an applicant for a contract with the agency;
 - 4-34 or
 - 4-35 (F) a contractor of the agency; and

4-36 (2) who would be placed in direct contact with a
 4-37 resident or client.

4-38 (b) The department, [~~and~~] the Department of State Health
 4-39 Services, and the Health and Human Services Commission shall
 4-40 require a person described by Subsection (a) to submit fingerprints
 4-41 in a form and of a quality acceptable to the Department of Public
 4-42 Safety and the Federal Bureau of Investigation for use in
 4-43 conducting a criminal history background check.

4-44 (c) Each agency shall obtain electronic updates from the
 4-45 Department of Public Safety of arrests and convictions of a person:

- 4-46 (1) for whom the agency performs a background check
 4-47 under Subsection (a); and
- 4-48 (2) who remains an employee, contractor, or volunteer
 4-49 of the agency and continues to have direct contact with a resident
 4-50 or client.

4-51 SECTION 11. Section 252.134, Health and Safety Code, is
 4-52 repealed.

4-53 SECTION 12. Section 531.851, Government Code, as amended by
 4-54 this Act, does not apply to a contract entered into by the executive
 4-55 commissioner of the Health and Human Services Commission before
 4-56 June 1, 2013. A contract entered into before June 1, 2013, is
 4-57 governed by the law in effect on the date the contract was entered
 4-58 into, and that law is continued in effect for that purpose.

4-59 SECTION 13. This Act takes effect immediately if it
 4-60 receives a vote of two-thirds of all the members elected to each
 4-61 house, as provided by Section 39, Article III, Texas Constitution.
 4-62 If this Act does not receive the vote necessary for immediate
 4-63 effect, this Act takes effect September 1, 2013.

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